Goh Ching Huat v Ketua Polis Negara & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A–01–86 OF 1998
MOKHTAR SIDIN, SURIYADI AND ZAINUN ALI JJCA
17 SEPTEMBER 2007

Public Servant — Dismissal — Dismissal from Police Force — Whether person signing letter of dismissal authorised to do so — Whether dismissal unlawful and void —

Public Servant — Dismissal — Dismissal from Police Force — Whether delegation of power was proper and proved in court — Whether dismissal unlawful and void

The plaintiff was a former Probationary Police Inspector with the Royal Malaysian Police. By a letter dated 28 December 1992, the plaintiff was dismissed from the police force on two grounds. As a result of that dismissal, the plaintiff filed a claim against the respondents in High Court for inter alia a declaration that the plaintiff's dismissal from the police force was unlawful, unconstitutional, void and of no effect. The plaintiff alleged that the letter of dismissal was invalid as it was not signed by the author of the letter. The trial judge found that one of the charges for the dismissal is sustainable and justified, and therefore dismissed the plaintiff's claim. The plaintiff appealed to the Court of Appeal.

Held, allowing the appeal

(1) The evidence showed that DW2 never signed this letter and it was his evidence that it was his deputy, Dato' Mohd Yussuf bin Said, who signed it. However the said Dato' Mohd Yussuf was not called to give evidence to confirm that he was the one who signed that letter (see para 18).

(2) In that letter the only handwriting that could be seen are the letters 'f' and 'AOL' and also the signature. Since Dato' Mohd Yussuf did not give evidence in court that he was the one who signed the letter, it could not be ascertained that he was the one who signed it (see para 18).

(3) It was clear that there was no concrete evidence that the letter was signed by an authorised officer authorised by the Deputy IGP to convey the decision of the Deputy IGP to dismiss the plaintiff (see para 18).

(4) There was no good reason why the letter purportedly to be written by DW2 be delegated to his deputy to sign it. Did the Deputy IGP convey his decision to DW2 or his deputy. If the decision was conveyed to Dato' Mohd Yussuf, it was more appropriate and proper that the letter be issued in the name of Dato' Mohd Yussuf rather that the name of DW2 (see para 19).

[Bahasa Malaysia summary

Plaintif merupakan bekas Inspektor Polis Tempoh Percubaan dengan Angkatan Polis Di-Raja Malaysia. Melalui sepucuk surat bertarikh 28 Disember 1992, plaintif telah dipecat daripada angkatan polis tersebut atas dua alasan. Akibat pemecatan tersebut, plaintif telah memfailkan satu tuntutan terhadap responden-responden di Mahkamah Tinggi untuk, antara lain, satu deklarasi bahawa pemecatan plaintif daripada angkatan polis adalah tidak sah, tidak berperlembagaan, terbatal dan tidak berkuat kuasa. Plaintif mengatakan bahawa surat pemecatan tersebut dalah tidak sah kerana ia tidak ditandatangani oleh penulis surat itu. Hakim perbicaraan mendapati bahawa salah satu pertuduhan untuk pemecatan boleh dikekalkan dan dijustifikasikan,dan oleh itu menolak tuntutan plaintif. Plaintif telah merayu ke Mahkamah Rayuan.

Diputuskan, membenarkan rayuan tersebut:

(1) Keterangan menunjukkan bahawa DW2 tidak menandatangani surat ini dan dalam keterangannya ia adalah timbalannya, Dato' Mohd Yussuf bin Said, yang telah menandatangani surat tersebut. Bagaimanapun Dato' Mohd Yussuf tersebut tidak dipanggil untuk memberikan keterangan bagi mengesahkan yang beliaulah yang menandatangani surat tersebut (lihat perenggan 18).

(2) Dalam surat tersebut tulisan tangan yang boleh dilihat hanyalah huruf-huruf 'f' dan AOL' dan juga tandatangan tersebut. Memandangkan Dato' Moha Yussuf tidak memberikan keterangan di mahkamah yang beliaulah yang telah menandatangani surat tersebut, ia tidak dapat dikenalpasti bahawa beliaulah yang telah menandatanganinya (lihat perenggan 18).

(3) Adalah jelas bahawa tiada keterangan yang kukuh bahawa surat tersebut telah ditandatangani oleh pegawai yang telah diberikan kuasa oleh

Timbalan Ketua Polis untuk menyampaikan keputusan Timbalan Ketua Polis untuk memecat plaintif (lihat perenggan 18).

(4) Tiada alasan wajar kenapa surat yang dikatakan telah ditulis oleh DW2 diberikan kepada timbalannya untuk ditandatangani. Adakah Timbalan Ketua Polis menyampaikan keputusannya kepada DW2 atau timbalannya. Jika keputusan tersebut telah disampaikan kepada Dato' Mohd Yussuf, ia lebih sesuai dan wajar agar surat tersebut dikeluarkan atas nama Dato' Mohd Yussuf dan bukan nama DW2 (lihat perenggan 19).]

Notes

For cases on dismissal from Police Force, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1911–1914.

Legislation referred to

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 general order 26

Appeal from: Civil Suit No 21–17 of 1995 (High Court, Ipoh)

Christopher Fernando (Mohamad Faiz bin Fadzil with him) (Aris Rizal Christopher Fernando & Co) for the appellant.

Suzana Atan (Senior Federal Counsel, Attorney-General's Chambers) for the respondent.

Mokhtar Sidin JCA (delivering judgment of the court):

[1] In this appeal the appellant was the plaintiff while the two respondents were the defendants. We will refer to the parties as they were in the court below.

[2] The facts as found by the learned trial judge are — the plaintiff was a former Probationary Police Inspector with the Royal Malaysian Police. By a letter dated 14 October 1992 he was directed by the first defendant, the Inspector-General of Police to show cause why he should not be dismissed pursuant to general order 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 in respect of two charges mentioned therein. The letter reads as follows:

TINDAKAN TATATERTIB

Adalah saya diarah memaklumkan bahawa Timbalan Ketua Polis Negara, pada menjalankan kuasa-kuasa yang telah diwakilkan kepadanya oleh Suruhanjaya Pasukan Polis melalui PU(B) 621 bertarikh 19 Disember 1985, telah memutuskan

untuk mengambil tindakan tatatertib terhadap anda di bawah Perintah Am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980. Representasi telah dibuat kepada Timbalan Ketua Polis Negara di atas kerja yang tidak memuaskan dan salah laku anda. Timbalan Ketua Polis Negara berpendapat bahawa kerja yang tidak memuaskan dan salahlaku tersebut wajar dikenakan hukuman 'Buang Kerja' dengan yang demikian Timbalan Ketua Polis Negara bercadang untuk membuang kerja anda atas alasan-alasan yang berikut:

1.1 Alasan Pertama:

> Bahawa anda seorang Pegawai Awam, iaitu Inspektor — dalam Pasukan Polis Diraja Malaysia, pada 15/12/88 hingga 31/12/88 telah tiada menulis dan mengemaskinikan Perharian Rasmi 1988 anda, dan tidak memajukan kepada Pegawai Pemerintah anda untuk pemeriksaan ialah perbuatan yang melanggar kehendak Hukuman Tetap Ketua Polis Negara (HTKPN) 'A' 121 para 8 dan dengan demikian anda telah melakukan satu kesalahan tatatertib iaitu ingkar perintah di bawah Perintah Am 4(2)(i), Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

Alasan Kedua:

> Bahawa anda pada 17/12/88 jam 2000 malam hingga 18/12/88 jam 0310 pagi, sebagai pegawai bertugas di Pengkalan Bn 3 PPH Ipoh, telah meninggalkan pengkalan tersebut dan gagal melapur pergerakan sebenar anda selain dari memaklumkan kepada bilik pengawal bahawa anda keluar makan pada jam 2000 malam, satu perbuatan yang bercanggah dengan para 15(b) Hukuman Tetap No 9 (Standing Order No 9) Bn. 3 Pasukan Polis Hutan, Ipoh iaitu ingkar perintah di bawah Perintah Am 4(2) (i) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

Anda adalah dengan ini dikehendaki untuk menyatakan secara bertulis dalam tempoh 16 hari daripada penerimaan surat ini, satu representasi dialamatkan kepada Timbalan Ketua Polis Negara melalui Komander Briged Utara, yang mengandungi alasan-alasan anda untuk membebaskan diri.

Jika surat representasi anda tidak diterima dalam tempoh tersebut Timbalan Ketua Polis Negara akan mengambil tindakan sewajarnya untuk memutuskan tindakan tatatertib terhadap anda berdasarkan kepada keterangan-keterangan yang ada padanya sekarang.

Sila akui penerimaan surat ini dengan menanda-tangani di ruang yang telah disediakan.

'BERKHIDMAT UNTUK NEGARA'

[3] By a letter dated 4 November 1992, the plaintiff replied that he was only able to answer the charges only in part as he would have to answer them from memory. He further stated that he did not have the relevant and

important information or any document in his possession to enable him to answer them fully. Inter alia, the letter reads:

PER: SURAT REPRESENTASI

TINDAKAN TATATERTIB

Adalah dengan segala hormatnya, izinkan saya merujuk kepada surat daripada Penolong Ketua Urusetia KPN TataTertib siri (PR)1/11242 bertarikh 14hb Oktober, 1992 berhubong perkara tersebut diatas.

2. Berikut adalah representasi saya berhubong dengan alasan-alasan yang dikemukakan untuk tindakan tatatertib terhadap diri saya:

2.1 Alasan Pertama

Buku perharian Rasmi 1988 saya sentiasa dicatit dan dikemaskinikan untuk dimajukan kepada Pegawai Pemerintah bagi tujuan pemeriksaan setiap akhir bulan atau awal bulan sehingga bulan November 1988. Disebabkan kesibukan tugas saya telah melakukan kesilapan iaitu terlupa menulis pada I5hb. dan 16hb Disember, 1988. Pada 17hb sehingga 31hb Disember, 1988, saya telah ditahan diBalai Polis, Kg Tawas, Ipoh. Oleh yang demikian, saya tidak dapat menulis buku perharian rasmi saya pada tempoh tersebut memandangkan pada waktu itu Perharian Rasmi saya berada di Pejabat Pegawai Bertugas, Bn. 3 PPH Ipoh.

Buku Perharian Rasmi 1988 saya telah diambil oleh Insp. Mohd Isa, pegawai Tatatertib daripada Bukit Aman semasa beliau mengambil percakapan saya di Batalion ke 3 PPH Kulim setelah saya dijamin keluar pada 31hb Disember, 1988. Lantaran itu, saya telah berusaha untuk mendapatkan balik buku tersebut melaluli Ejutan Batalion, tetapi sehingga sekarang tidak ada tindak balas mengenainya. Disebabkan Perharian Rasmi saya telah diambil oleh pegawai tersebut, maka saya tidak berupaya untuk memajukannya kepada Pegawai Pemerintah untuk di periksa.

2.2 Alasan Kedua

Memandangkan Batalion ke 3 PPH di Ipoh telah berpindah sepenuhnya ke pengkalan Batalion ke 3 PPH di Kulim Kedah maka satu platun daripada Platun 3/A Kompeni telah diarahkan membuat kawalan sementara di Kem Bn. 3 PPH Ipoh yang akan diambil alih oleh Batalion 19 PPH. Di masa tersebut saya adalah Pegawai Penjaga Platun 3 juga Pegawai Bertugas pada ketika itu.

Mengikut Hukuman Tetap Bn 3 PPH Ipoh No 9 para 15(b), waktu makan malam bagi pegawai bertugas adalah antara jam 5.15 petang hingga 6.45 petang. Untuk makluman Y Bhg. Tan Sri, pada ketika itu Mes Pegawai Bn 3 PPH Ipoh telah ditutup sepenuhnya dan makanan bermasak untuk pegawai bujang sudah tidak disediakan lagi. Justeru itu saya terpaksa membahagikan waktu makan yang sesuai bagi diri saya dan saya memilih jam 8.00. malam. Saya terpaksa membuat keputusan untuk makan malam

di luar pengkalan walaupun saya sedar pada waktu itu saya sepatutnya menjalankan tugas Pegawai Bertugas, saya amat menyesal diatas kejadian ini. Sebelum saya meninggalkan pengkalan Bn. 3 PPH, Ipoh saya telah memaklumkan pergerakan saya kepada anggota yang bertugas di Bilik Pengawal, Stateia itu Konst 93768 Fuad b Saad dan Konst. 112719 Che Ahmad b Yahya dan telah mengarahkan angguta tersebut mencatitkan pergerakan saya di dalam buku catitan keluar masuk pengkalan (Guard-House Station Diary). Saya tidak dapat memberitahu pergerakan sebenar tempat saya makan disebabkan pada waktu itu, saya sendiri tidak pasti dimanakah saya akan makan pada malam tersebut.

3. Saya menyedar akan kesilapan saya yang lalu dimana kerja dan kelakuan saya didapati kurang memuaskan selama ini. Saya merasa insaf dan menyesal akan perkara-perkara yang Y Bhg Tan Sri telah sedia maklum. Saya merayu agar saya terus diberi peluang untuk berkhidmat di Jabatan Polis kerana saya masih berminat dan mencintai Pasukan Polis DiRaja Malaysia.

4. Akhirkata saya merayu dengan penuh rasa penyesalan agar saya diringankan hukuman diatas kesalahan saya ini. Saya sedar setiap insan tidak pernah lari daripada melakukan kesalahan. Dengan yang demikian saya berharap Y Bhg Tan Sri dapat memaafkan kesalahan saya dan meringankan hukuman keatas diri saya ini. Segala jasa baik Y Bhg Tan Sri adalah amat dihargai dan disudahi dengan ribuan terima kasih.

Sekian.

BERKHIDMAT UNTUK NEGARA'

[4] On 28 December 1992 the plaintiff received a reply to his letter informing him that he had been dismissed from the police force. In our view this letter is very important where we will refer to it later on. For that reason we will cite the letter in full:

IBU PEJABAT POLIS

POLIS DI RAJA MALAYSIA

BUKIT AMAN

50560 KUALA LUMPUR.

PERKHIDMATAN CEMERLANG WAWASAN PASUKAN

Ruj. Kami: (PR) I/11242

Tarikh: 28hb Disember, 1992

Encik Goh Ching Huat

Inspector-Percubaan — I/11242

Melalui: Komander

Briged Utara PPH

Ulu Kinta

Perak Darul Ridzuan

HUKUMAN TATATERTIB

Adalah saya diarahkan merujuk kepada surat representasi anda bilangan (PR) I/11242 bertarikh 4hb November, 1992, bagi menjawab surat Ibu Pejabat ini bilangan (PR)I/11242 bertarikh 14hb Oktober, 1992.

2. Adalah dimaklumkan, bahawa setelah menimbang representasi anda dengan teliti dan saksama, Timbalan Ketua Polils Negara berpendapat bahawa anda tidak dapat membebaskan diri anda daripada pertuduhan-pertuduhan pelanggaran tatatertib seperti yang disebutkan di dalam surat bilangan (PR)I/11242 bertarikh 14hb Oktober, 1992.

3. Oleh yang demikian, pada menjalankan kuasa-kuasa yang diwakilkan kepadanya oleh Suruhanjaya Pasukan Polis melalul PU(B) 621 bertarikh 19hb Disember, 1985, Timbalan Ketua Polis Negara telah memutuskan untuk menjatuhkan hukuman seperti berikut:

(Pertuduhan Pertama) BUANG KERJA

(Berkuatkuasa dari tarikh

3.2 Pertuduhan Kedua) penerimaan surat ini)

4. Sila beri akuan penerimaan surat ini dengan menandatangani di ruang yang telah disediakan.

BERKHIDMAT UNTUK NEGARA

(DATO' HJ AHMAD RAGIB B HJ MOHD. SALLEH) AOL

f Penolong Ketua Urusetia KPN

(Tatatertib)

bp Ketua Polis Negara

POLIS Dl RAJA MALAYSIA

[5] As a result of that dismissal the plaintiff then filed a writ of summons dated 14 February 1995 seeking the following orders:

1. a declaration that the plaintiff's dismissal from the police force is unlawful, unconstitutional, void and of no effect and that the plaintiff is still a Probationary Inspector in the Royal Malaysian Police Force and entitled to all salaries, emoluments & benefits due as such Probationary Inspector;

2. an enquiry to determine the salaries, emoluments and other benefits due to the plaintiff;
3. damages;
4. costs;
5. any further or other relief deemed fit and proper by this honourable court.

[6] In his statement of claim the plaintiff, inter alia, stated:

1. The plaintiff is, despite his dismissal, a Probationary Inspector, and was at all material times a Probationary Inspector in the Royal Malaysian Police Force, and in the employ of the second defendant, the Government of Malaysia.
2. By a letter dated 14 October 1992, the first defendant informed the plaintiff of its intention to dismiss the plaintiff from the Police Force and directed the plaintiff to show cause why he should not be dismissed, pursuant to general order 26 of the Public Officers (Conduct & Discipline (Chapter D) General Orders 1980 in respect of the two (2) undermentioned charges preferred against him by the first defendant:

TINDAKAN TATATERTIB

Adalah saya diarah memaklumkan bahawa Timbalan Ketua Polis Negara, pada menjalankan kuasa-kuasa yang telah diwakilkan kepadanya oleh Suruhanjaya Pasukan Polis PU(B) 621 bertarikh 19/12/85, telah memutuskan untuk mengambil tindakan tatatertib terhadap anda di bawah Perintah Am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980. Representasi telah dibuat kepada Timbalan Ketua Polis Negara di atas Kerja vang tidak memuaskan dan salah laku anda. Timbalan Ketua Polis Negara berpendapat bahawa kerja yang tidak memuaskan dan salahlaku tersebut wajar dikenakan hukuman 'Buang Kerja' dengan yang demikian Timbalan Ketua Polis Negara bercadang untuk membuang kerja anda atas alasan-alasan yang berikut:

Alasan Pertama:

Bahawa anda seorang Pegawai Awam, iaitu Inspector dalam Pasukan Polis Diraja Malaysia, pada 15/12/88 hingga 31/12/88 telah tiada menulis dan mengemaskinikan Perharian Rasmi 1988 anda, dan tidak memajukan kepada Pegawai Pemerintah anda untuk pemeriksaan ialah perbuatan yang melanggar kehendak Hukuman Tetap Ketua Polis Negara (HTKPN) 'A' 121 para 8 dan dengan demikian anda telah melakukan satu kesalahan tata tertib iaitu ingkar perintah dibawah perintah am 4(2)(i), Perintah-Perintah Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

Alasan Kedua:

Bahawa anda pada 17/12/88 Jam 2000 malam hingga 18/12/88 Jam 0310 pagi, sebagai pegawai bertugas di Pengkalan Bn. 3 PPH Ipoh, telah meninggalkan pengkalan tersebut dan gagal melapur pergerakan sebenar anda selain dari memaklumkan kepada bilik pengawal bahawa anda keluar makan pada Jam 2000 malam, satu perbuatan yang bercanggah dengan para 15(b) Hukuman Tetap No. 9 (Standing Order No. 9) Bn. 3 Pasukan Polli Hutan, Ipoh iaitu ingkar perintah di bawah Perintah Am 4(2) (i) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

2. Anda adalah dengan ini dikehendaki untuk menyatakan secara bertulis dalam tempoh 16 hari daripada penerimaan surat ini, satu representasi dialamatkan kepada Timbalan Ketua Polis Negara melalui Komander Briged Utara, yang mengandungi alasan-alasan anda untuk membebaskan diri.

3. Jika surat representasi anda tidak diterima dalam tempoh tersebut, Timbalan Ketua Polis Negara akan mengambil tindakan sewajarnya untuk memutuskan tindakan tatatertib terhadap anda berdasarkan kepada keterangan-keterangan yang ada padanya sekarang.

3. Responding to the said show cause letter, (at the behest of the 1st Defendant) the plaintiff sent his reply dated 4 December 1992, wherein he was only able to answer the said charges leveled against him partially and incompletely and from memory, as he had no relevant and material information nor any documents in his possession.

4. The plaintiff was, in the circumstances, unable to answer the allegations to the satisfaction of the defendants.

5. Notwithstanding this, and without affording him any reasonable facilities to do so in the form of providing him with the investigation papers, the complaint and all other relevant information including the contents of enquiries (if any), upon which the first defendant based its decision, proceedings nevertheless continued, culminating in the dismissal of the plaintiff.

The charges levelled against the plaintiff are false, vague, baseless & utterly without foundation.

By a letter dated 28 December 1992 the first defendant informed the plaintiff that the latter was dismissed from the Police Force.

The plaintiff will contend that:

(a) The defendant's action in the circumstances of art 135(2) of the Federal Constitution, in that the plaintiff had not been afforded a

reasonable opportunity of being heard, and that such action also constitutes a breach of the rules of natural justice.

(b) The first defendant, by giving notice of its intention to dismiss the plaintiff with no other alternative punishments and even before receiving the plaintiff's representations and before making proper inquiries (as they are bound to) had abdicated its functions, pre-judged the issues and deprived itself of the discretion conferred upon it under the said general orders.

(c) The first defendant did not consider relevant facts and circumstances which were favourable to the plaintiff and which facts and circumstances would have exonerated the plaintiff.

WHEREFORE The plaintiff prays for the following orders:

(1) a declaration that the plaintiff's dismissal from the Police Force is unlawful, unconstitutional, void and of no effect and that the plaintiff is still a Probationary Inspector in the Royal Malaysian Police Force and entitled to all the salaries, emoluments & benefits due as such Probationary Inspector;

(2) an enquiry to determine the salaries, emoluments and other benefits due to the plaintiff;

(3) damages;

(4) costs;

(5) any further or other relief deemed fit and proper by this honourable court.

[7] The defendants filed their statement of defence dated 20 May 1995 which reads:

1. Defendan pertama dan kedua (defendan-defendan) mengakui perenggan pertama dan kedua pernyataan tuntutan plaintif dan menegaskan bahawa fakta tersebut hanya diakui sebelum plaintif ditamatkan perkhidmatannya.

2. Defendan-defendan mengakui perenggan ketiga pernyataan tuntutan setakat menghantar dan menyampaikan surat tunjuk sebab kepada plaintif dan plaintif telah menjawabnya secara sepenuhnya dengan diberi masa dan peluang yang mencukupi. Mengenai apa-apa tohmahan tentang jawapannya yang diberikan tidak lengkap adalah tidak didalam pengetahuan defendan-defendan dan menghendakki pembuktian dengan keras dan sepenuh terhadapnya.

3. Defendan-defendan menafikan perenggan 4 pernyataan tuntutan dan menegaskan bahawa plaintif telah menjawab alegasi-alegasi berkenaan dengan sepenuhnya dan tidak terhalang oleh mana-mana faktor dalam penyediaan jawapannya.

4. Defendan-defendan menafikan perenggan 5 pernyataan tuntutan kerana bukanlah tugas defendan pertama untuk membekalkan kepada plaintif kertas-kertas siasatan, pengaduan, maklumat-maklumat yang relevan termasuk isi kandungan enkuari untuk plaintif menyediakan jawapan. Defendan menegaskan bahawa apa-apa tohmahan kepada keperluan perkara-perkara di atas menghendakki plaintif membuktikan sepenuhnya.

5. Defendan-defendan menafikan perenggan 6 pernyataan tuntutan yang menghendakki pembuktian yang kukuh dan defendan-defendan menegaskan bahawa pertuduhan terhadap plaintif adalah berdasarkan kepada fakta-fakta yang nyata dan kewajipan-kewajipan yang dipertanggungjawabkan kepada plaintif dibawah Peraturan-peraturan perkhidmatannya dan bukan kepada fakta-fakta yang diada-adakan.

6. Defendan-defendan mengakui perenggan 7 pernyataan tuntutan dan menegaskan bahawa perkhidmatan plaintif telah ditamatkan dengan teratur dan mengikut undang-undang dan kuasa-kuasa yang termaktud di bawahnya.

7. Defendan-defendan menafikan setiap tohmahan-tohmahan di perenggan 8 pernyataan tuntutan plaintif dan menghendakki pembuktian yang kukuh dimana sekali lagi menegaskan bahawa pihaknya tidak melanggar mana-mana peruntukan undang-undang maupun keadilan asasi dalam menamatkan perkhidmatan plaintif dan menegaskan bahawa tuntutan plaintif dalam pernyataan tuntutannya tidak menzahirkan langsung kausa tindakan dibawah undang-undang sivil.

8. Oleh yang demikian, defendan-defendan menegaskan bahawa mereka tidak bertanggungan atas kesemua atau sebarang tuntutan gantirugi/pampasan atau relif-relif permohonan plaintif juga tidak berhak kepada sebarang pengistiharan seperti diminta dalam pernyataan tuntutannya.

8. Justeru itu, defendan-defendan memohon supaya tuntutan plaintif ditolak dengan kos.

[8] The learned judge who heard the case, dismissed the plaintiff's claim after a full hearing and refused the order prayed for by the plaintiff. In his written judgment the learned judge found:

Findings:

On the 1st charge:

The plaintiff's claim that he only returned to his camp after he was released on 31.12.1988 is not disputed by the defence. During this period it is obvious that he could not have been in possession of his official diary as it was not found with him when he was arrested. His claim that he had left it at the duty room must therefore be accepted as true. Under the circumstances, it is clear that he would not be in a position to enter his official diary for that period.

It follows that the charge that he had failed to enter his official diary for the period 15.12.1988 to 31.12.1988 was unfounded. The disciplinary authority that sat to consider the charge had committed a jurisdictional error of law. Accordingly, the decision on this charge must be quashed.

Having come to the finding that he was unlawfully dismissed on this charge there is no necessity for me to consider the question of fact and law whether he had been unfairly deprived of a reasonably opportunity of making a representation by reason that his diary was not available to him.

On the 2nd charge —

1. First it is pertinent to note that the charge framed against the plaintiff was for the offence of leaving camp and failing to report his actual movement while being the officer on duty between the hours of 2000 on the 17.12.88 and 0310 on 18.12.88. It is not for being absent from the camp as counsel had submitted.

2. In his evidence before the Court the plaintiff did not deny that he had left the Camp at 8.00 on 17.12.88. He also did not deny that he was on duty at the time. However, he refrained from stating the period for which he was on duty. It must therefore be accepted that he was indeed on duty between the hours of 8.00 p.m. on.17.12.88 and 3.10 a.m. on 18.12.88.

3. The charge was therefore not erroneous or false as submitted. The fact that he was arrested soon after he left the Camp at 8.00 p.m. for his dinner and was subsequently arrested by the police and therefore could not return to the camp until his release on 31.12.1988 is therefore irrelevant.

4. It is clear that there was enough materials for the disciplinary authority to find that the plaintiff was guilty of the 2nd charge. The materials were:

    i) evidence that plaintiff was arrested at 12.10 a.m. on 18.12.1988 outside the Camp as he came out of the Big Sister Massage Parlour.

ii) evidence of the plaintiff's immediate superior at the camp, ASP Salleh bin Mat Rashid (DW3) who said that the plaintiff had never sought his permission to leave camp for his meals outside. Standing Order No. 9 of the Camp requires that the plaintiff to remain at the camp at all times he was on duty. He could only leave with his permission or the permission of the Commanding Officer. He also said that the canteen was there to prepare food.

> The plaintiff may have his side of the story to tell (in his representation to the disciplinary authority under general order 26) that ASP Salleh had given him permission and that the Commanding Officer had also given him the permission (which incidently, was not substantiated by calling the Commanding Officer to give evidence) and that there was a necessity to have his meal outside the camp as the canteen was not operational at the time. But it was entirely for the disciplinary committee to decide on the facts presented before it whether the plaintiff had exculpated himself. The court role in judicial review is basically supervisory rather than appellate in nature and unless the disciplinary authority had committed any procedural impropriety, or had arrived at the decision illegally or irrationally the court would not be minded to review such a decision. (R. *Ramachandran v Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147.)

See also, Yeap Hock Seng @ *Ah Seng v Minister of Home Affairs* [1975] 2 MLJ 279 per Abdoolcader J in an application for habeas corpus the principle of which would be equally applicable in the instant case:

> the court does not sit in appeal against the decision of the Minister regarding materials on which the detention order was made. The court does not examine the adequacy or truth of these materials and cannot Interfere with the decision on the ground that if the court had examined them it would have come to a different conclusion.

The answer required of the plaintiff with respect to the second charge, it is clear, did not require any reference to his diary. Therefore the plaintiff's allegation that he was not in possession of his diary which he alleged had been kept by the defendant, would not apply as it would in the first charge such that it could not be said that the plaintiff had not been accorded a fair hearing.

The disciplinary authority had not committed any procedural improprieties or acted irrationally or illegally in finding the plaintiff guilty and dismissing him.

As for the submission that the letter of dismissal was forged, it is clear this is not true. DW2, Dato' Hj. Ahmad Ragib b Hj Mohd Salleh had testified that the letter was signed on his behalf by his deputy, ACP Dato' Mohd Yussuf b. Said as he was away on leave at that time. There is no law to say that he cannot authorise another officer to sign on his behalf. The object of the letter was merely communicative. It was merely to inform the plaintiff that he had been dismissed.

There is no ground to review the defendant's finding on the second charge.

Order:

The plaintiff is seeking a declaration that he is still a Probationary Inspector in the Police Force. The disciplinary proceeding was instituted on two charges, for which the same punishment of dismissal was meted out in respect of each charge. This is clear from the letter from the Ketua Polis Negara informing the plaintiff of the decision to dismiss him in Agreed Bundle, p 8 (above). Only the first charge was found to be unsustainable. It follows that the entire disciplinary proceeding cannot be declared void as he is still liable for the punishment on the second charge. It follows therefore he is not entitled to the declaration sought.

The plaintiff's claim is dismissed with costs.

[9] From the above it could be seen that the learned judge found that there is no basis to find the plaintiff guilty on the first charge ie for not updating his diary because at the material dates he was in police custody. Further, the diary was taken up away from him when he was under investigation and was not returned to him even though he had requested for it. As to the second charge (for leaving his post) the learned trial judge found that there were sufficient evidence that he had committed the offence and the Disciplinary Board was correct to find the plaintiff on that charge. The learned judge went further by saying that since one of the charges had been proven the first respondent was justified in dismissing the plaintiff and the learned judge dismissed the plaintiff's application for a declaration.

[10] Not satisfied with that decision, the appellant appealed to this court. There is no cross appeal by the respondents in respect of the finding by the learned judge in respect of the first charge. The appeal by the plaintiff is in respect of his dismissal from the force based entirely on the second charge. The Memorandum of Appeal of the plaintiff stated:

1. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta apabila beliau menolak permohonan Perayu, walaupun ianya jelas bahawa presiding yang berakhir dengan pemecatan Perayu adalah bercanggahan dengan Artikel 135(2) Perlembagaan Persekutuan dan rukun-rukun keadilan asasi.
2. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan berpegang bercanggahan kepada fakta-fakta dan keadaan bahawa tuduhan-tuduhan tersebut mengandungi butiran-butiran yang memadai, walaupun dengan pengakuan Setiausaha, Suruhanjaya Pasukan Polis.
3. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan tidak berpegang bahawa terujudnya kemungkiran Peraturan 24 Perintah-Perintah Am Bab D yang mengatakan bahawa hanya pengerusi mempunyai hak dan kuasa untuk memulakan prosiding dan

untuk memutuskan atas jenis tindakan yang patut diambil terhadap Perayu dan bukan sesiapa yang lain.

4. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan tidak mengambil kira bahawa prosiding didalam kes ini dimulakan oleh pihak yang tidak diberi kuasa, bercanggahan dengan proviso undang-undang yang mengakibatkan prosiding di dalam kes ini tidak sah dan terbatal.

5. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan tidak menimbangkan terdapat unsur-unsur "malafide" (niat jahat) dalam menjalankan pemecatan Perayu.

6. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan berpegang bahawa tidak terdapat apa-apa ketidakadilan prosedur terhadap Perayu, apabila tidak sehelaipun dokumen yang telah dihantar kepada Suruhanjaya dan diambilkira oleh mereka telah diberikan kepada Perayu.

7. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan berpegang bahawa tiada apa-apa keperluan untuk memberi Perayu semua dokumen yang berkaitan dengan pertuduhan terhadap Perayu dimana bagi membolehkan Perayu membela diri.

8. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan tidak membuat satu keputusan berpihak kepada Perayu atas isu bahawa Perayu tidak didapati bersalah atas mana-mana pertuduhan yang dikenakan keatasnya.

9. Yang Arif Hakim telah tersalah dari segi undang-undang dan fakta dengan tidak secara tepat dan betul menggunakan proviso-proviso Artikel 135(2) Perlembagaan Persekutuan dan rukun-rukun keadilan asasi termasuk proviso-proviso Bab D, Perintah-Perintah Am terhadap keseluruhan fakta dan keadaan kes ini.

[11] The learned counsel for the plaintiff went at great length to show that the learned judge had erred in his judgment. We see no merit in the submission of the plaintiff except on one point ie the letter dismissing the plaintiff. The letter is cited above. It is clear from the evidence that the letter was not signed by the person named to be the author of the letter. It is clear from the letter the author was Dato' Hj Ahmad Ragib b Mohd Salleh. He gave evidence in court as DW 2. In his evidence he said:

AB 8:

Timbalan saya yang menanda tangani surat ini, mewakili saya kerana saya bercuti pada masa ini.

Apa yang dimerekodkan dibawah perenggan 3.1 dan 3.2 adalah hukuman buang kerja bagi setiap tuduhan.

Cross-examination:

Surat ini bukan ditanda tangani oleh saya tetapi oleh timbalan saya, iaitu Dato' Mohd Yussuf b. Said, ACP pada masa itu.

There is an 'f' in the signature which means 'for'. Saya mahir dengan tulisan dan signature pegawai ini. 'AOL' means 'away on leave'.

Saya anggap yang 'f' dan 'AOL' dibuat pada masa beliau menurunkan tandatangannya.

There is no b/p (bagi pihak) when he signed on my behalf, I agree.

Saya ada pengetahuan tentang surat ini.

Pada 14.10.92 saya yang mengeluarkan surat tunjuk sebab kepada plaintiff, AB 3 & 4.

b/p" is the accepted initial when we sign on behalf.

Saya tidak tahu sama ada beliau membuat tanda 'f' dan 'AOL' selepas beliau menandatangani surat ini.

Saya tidak setuju yang beliau boleh dikatakan melakukan "forgery" kerana beliau telah menandatangani surat ini dengan menggunakan nama saya.

If the signature is such, that it was made to appear like the signature of the person mentioned, it may amount to 'forgery'.

Saya tidak tahu sebenarnya siapa yang tulis "f" dan 'AOL'. Saya cuma boleh anggap ianya ditulis oleh beliau.

Jika dilihat daripada berbagai bentuk 'f' ini boleh dilihat sebagai '1' tetapi bagi saya huruf ini adalah huruf 'f'.

Sava tidak setuju huruf ini could be 'false' or 'forgery'.

Saya tidak dapat memberi keterangan bahawa 'AOL' ditulis dengan pen yang lain dan samada ditulis oleh orang lain.

Tarikh sebenar saya lihat surat ini saya tidak ingat.

Re-examination:

Saya pasti huruf ini huruf 'f'. Dalam urusan seharian banyak surat yang ditanda tangani bagi pihak orang lain secara spontan huruf 'f' digunakan dalam bahasa Inggeris. B/p adalah 'bagi pihak' dalam Bahasa Malaysia. Saya bercuti pada masa tersebut.

In respect of this letter the learned counsel for the plaintiff submitted that the letter was not signed by DW2, though the name stated in the letter was the name of DW2. Therefore the letter is a forgery. If the letter is not valid there is no dismissal. DW2 was instructed to sign but he did not sign it. Only the person authorised to sign should sign the letter. He cannot authorise another

person to sign for him. Did the Deputy IGP authorise the other person to sign it. For that reason this letter has no legal force which means that the plaintiff was never dismissed from the Police Force.

[12] We are of the view that the letter informing the plaintiff of his dismissal is an important letter. This letter affects the plaintiff's right to employment. We agree with the learned counsel for the plaintiff that without this letter, the plaintiff is deemed to be still in the service of the Royal Police Force. The evidence shows that DW2 never signed this letter and it was his evidence that it was his deputy, Dato' Mohd Yussuf bin Said, who signed it. Surprisingly the said Dato' Mohd Yussuf was not called to give evidence to confirm that he was the one who signed that letter. DW2 said he was familiar with the handwriting and signature of Dato' Mohd Yussuf. In that letter the only handwriting that could be seen are the letters 'f' and 'AOL' and also the signature. Since Dato' Mohd Yussuf did not give evidence in court that he was the one who signed the letter, it could not be ascertained that he was the one who signed it. There was nothing in the letter to indicate that he was the one who signed it because his name never appeared in that letter. DW2 gave evidence that he was familiar with the handwriting and the signature of Dato' Mohd Yussuf. But that was all. DW2 did not give evidence that he saw the said Dato' Mohd Yussuf signing that letter and we believe that he could not do so because he was on leave. DW2 also did not say that Dato' Mohd Yussuf had told him that he had signed the letter on behalf of DW2. It is clear to us that there is no concrete evidence that the letter was signed by an authorised officer authorised by the Deputy IGP to convey the decision of the Deputy IGP to dismiss the plaintiff.

[13] Perusing the letter, it is clear to us that the decision of the Deputy IGP was conveyed to the writer (DW2). How could the decision be conveyed to DW2 when he was on leave. We could not find any good reason why the letter purportedly to be written by DW2 be delegated to his deputy to sign it. Did the Deputy IGP conveyed his decision to DW2 or his deputy. In our view, if the decision was conveyed to Dato' Mohd Yussuf, it is more appropriate and proper that the letter be issued in the name of Dato' Mohd Yussuf rather that the name of DW2. Bearing in mind that this letter is a very important letter, it is only appropriate and proper that the letter bears the name and his status.

[14] For the reasons above we find that the dismissal of the plaintiff was not properly done. We are therefore of the view that the appeal should be allowed with costs here and below. The plaintiff is entitled to prayers 1 and 2 as stated

in the statement of claim. We are of the view that he is not entitled to damages because the appeal is allowed merely on technicality and not on substance.

Appeal allowed.

Reported by Brendan Navin Siva